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TODD AND OTHERS V. McFALL AND OTHERS.—Decided at Richmond, March 9, 1899.—*Riely, J.*

1. LEGACIES—*What fund chargeable—Intention to charge real estate.* As a general rule, the personal estate is not only the primary, but the only, fund for the payment of legacies, and the real estate is not chargeable with their payment in case of deficiency of personal estate, unless made so by the testator. The intention to charge the real estate, however, must be either expressly declared, or clearly deducible from the language and dispositions of the will.

2. WILLS—*Partnership real estate—Devised as real estate—Legacies.* A testator owning an interest in partnership real and personal property has the right, as respects the objects of his bounty, to distinguish between the two classes of property, and treat the personal estate as personalty, and the real estate as realty, and declare out of which fund pecuniary legacies shall be paid.

3. WILLS—*Case in judgment—Out of what fund legacies payable—Subrogation.* A testator bequeaths his personal property "subject to certain legacies hereinafter mentioned" to his nephews, and devises his real estate to the same nephews for life, with remainder in fee to their heirs, and then gives certain pecuniary legacies "payable from my estate." The time of payment of the legacies, and the division of the real estate, was postponed for several years in order to provide, as stated in the will, for the payment of a farm recently purchased. The personal estate was not sufficient to pay debts and legacies.

*Held:* The personal estate alone is liable for the payment of the legacies, and the real estate is not bound to contribute to the legacies the amount diverted to pay debts of the testator.

4. WILLS—*Legacies—Intention to charge real estate.* An intention to charge the real estate with the payment of legacies is inferred where pecuniary legacies alone are first given and no part of the real estate is specially devised, followed by a residuary clause, devising and bequeating the residue of the real and personal estate; or where a testator devises his real estate, after a direction that debts and legacies be first paid; or devises the remainder of his estate, real and personal, after the payment of debts and legacies; or the devise is declared to be made after they are paid.

5. DEBTS OF DECEDENT—*Primary funds of payment—Liens on land.* In the absence of a testamentary provision for the payment of debts, the personal property of a decedent in the primary fund for their payment, even though the debts be secured by a lien given by the decedent in his lifetime on his real estate.

6. CHANCERY PRACTICE—*Rehearing—Acquiescence—Estoppel.* The mere lapse of ten years will not estop a party to a pending suit from filing a petition to rehear an interlocutory decree in the suit.

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NEWPORT NEWS, HAMPTON AND OLD POINT DEVELOPMENT CO.

V. NEWPORT NEWS STREET RAILWAY CO.—Decided at Richmond, March 16, 1899.—*Harrison, J.* Absent, *Cardwell, J.*

1. STATUTE OF FRAUDS—*Written contracts—Resolutions of directors—Completed contract.* A resolution of the board of directors of a corporation duly signed by its president and secretary, which sufficiently sets forth the terms of the contract, is

a compliance with the statute of frauds as to contracts for the sale of real estate. But when such a resolution is relied on as the evidence of a written agreement, it must, like other written contracts, show on its face a complete and concluded agreement between the parties. Nothing must be left open for future settlement or agreement.

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BEATTY V. BARLEY AND ANOTHER.—Decided at Richmond, March 16, 1899.—*Cardwell, J.*:

1. CHANCERY PLEADING—*Bill of review—New case—Errors of law—Case in judgment.* A complainant cannot make an entirely new and different case by a bill of review from that made by his original bill. If the ground for the bill of review be errors of law, they must be such as appear on the face of the decrees, orders and proceedings, in the cause, arising on facts either admitted by the pleadings or stated as facts in the decrees. In the case in judgment, the complainant in her original bill admitted that one of the defendants had an insurable interest in the life of her husband, and sought a recovery on the ground that, having a double security for his debt, he had collected both and thus been twice paid. In the bill of review the insurable interest is denied and relief sought on other grounds. This cannot be allowed.

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NORFOLK & WESTERN RAILWAY CO. V. BOARD OF PUBLIC WORKS.

Decided at Richmond, March 23, 1899.—*Keith, P.*:

1. TAXATION—*Tugs and barges—Situs of taxation—Interstate commerce—Case in judgment.* The fact that tugs and barges are engaged in interstate commerce does not exempt them from taxation; nor does the place of their enrollment or registration fix their *situs* for taxation, though it is a circumstance to be considered. In the case in judgment, they are owned by a Virginia corporation, are used exclusively in the transportation of coal from a given point in this State to various points in other States, and are not assessed for taxation elsewhere in or out of the State of Virginia. Under these circumstances, they are properly taxable in this State, in the county where they are always loaded.